

**FILED & ENTERED**

**MAY 07 2014**

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA—LOS ANGELES DIVISION**

In re:

WILLIAM M. LANSDALE,

Debtor(s).

WILLIAM M. LANSDALE, SOUTHERN  
CALIFORNIA FINANCIAL  
CORPORATION, A CALIFORNIA  
CORPORATION,

Plaintiff(s),

v.

RUFUS VON THULEN RHOADES,

Defendant(s).

CHAPTER 11

Case No.: 2:12-bk-45706-WB

Adv. No.: 2-12-ap-02463-WB

**FINDINGS OF FACT AND CONCLUSIONS  
OF LAW IN SUPPORT OF SUMMARY  
JUDGMENT IN FAVOR OF DEFENDANT  
RUFUS VON THULEN RHOADES**

Date: February 11, 2014

Time: 2:00 P.M.

Courtroom: 1375

On October 24, 2012, William M. Lansdale (“Debtor”) filed a voluntary petition under chapter 11 of the U.S. Bankruptcy Code. Debtor is the president and sole shareholder of Southern California Financial Corporation (“SCFC”).

1 On November 13, 2012, Debtor and SCFC initiated this adversary proceeding by filing a  
2 complaint against Rufus von Thulen Rhoades (“Rhoades”) seeking damages of \$30,000,000  
3 based upon Rhoades’ alleged legal malpractice.

4 On December 17, 2012, Rhoades filed a motion to dismiss the complaint, which Debtor  
5 and SCFC jointly opposed. During a hearing on March 11, 2013, the court found that the legal  
6 malpractice claim was held by SCFC alone. The court dismissed Debtor for lack of standing and  
7 declined to exercise its discretion to abstain from the case.

8 On December 3, 2013, Rhoades filed a motion for summary judgment against SCFC.  
9 During a hearing on February 11, 2014, the court granted the motion upon finding that SCFC’s  
10 legal malpractice claim is time-barred pursuant to Cal. Code Civ. Proc. § 340.6. On March 4,  
11 2014, Rhoades and SCFC consented to the entry of final orders and judgment by this court. This  
12 judgment is final. 28 U.S.C. § 157(c)(2); see also In re Bellingham Ins. Agency, Inc., 702 F.3d  
13 553, 557 (9th Cir. 2012) (cert. granted June 24, 2013). If it is found on appeal that this court  
14 does not have jurisdiction to enter final judgment in this matter, this judgment shall be  
15 considered a report and recommendation to the district court. See 28 U.S.C. § 157(c)(1). The  
16 court now enters the following findings of fact and conclusions of law in support of its entry of  
17 judgment for Rhoades. To the extent that any findings of fact are included under conclusions of  
18 law, they shall be deemed findings of fact. To the extent that any conclusions of law are  
19 included under findings of fact, they shall be deemed conclusions of law.

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21 Finding of Facts  
22

23 1. Debtor and several former partners developed the Marina Pacifica condominium  
24 complex in Long Beach, California. Pursuant to agreement, the Marina Pacifica unit owners  
25 agreed to pay Debtor and his partners an “Assignment Fee,” which was to be adjusted pursuant  
26 to a predetermined formula in 2006 and 2021.

27 2. In 2006, as the first escalation date approached, a dispute arose between the HOA  
28 and Debtor over calculation of the adjusted Assignment Fee. In the midst of this dispute,

1 Rhoades as Debtor's attorney caused SCFC to be created for the purpose of holding Debtor's  
2 interest in the Assignment Fee. Rhoades became SCFC's Vice President and General Counsel  
3 and then facilitated the transfer of Debtor's interest in the Assignment Fee to SCFC on January  
4 15, 2008.

5 3. In 2007, the California Legislature enacted the statutes codified at Section 1098  
6 and 1098.5 of the Civil Code. These statutes required the recipient of any real property "transfer  
7 fee" prior to January 1, 2008 to record a written notice of such transfer fee ("Notice") with the  
8 appropriate county recorder's office on or before December 31, 2008. Rhoades did not record,  
9 or otherwise counsel SCFC to record, a Notice of the Assignment Fee prior to the expiration of  
10 the December 31, 2008 deadline.

11 4. On March 23, 2009, the HOA filed a lawsuit against Debtor and SCFC in Los  
12 Angeles Superior Court ("HOA Action") alleging, *inter alia*, that the Assignment Fee was  
13 uncollectable because it was a "transfer fee" pursuant to § 1098.5 and SCFC did not record a  
14 Notice of the Assignment Fee prior to the statutory deadline.

15 5. On July 31, 2010, Rhoades resigned as counsel for SCFC, which he confirmed in  
16 a letter of resignation.

17 6. By October 2011, SCFC had incurred over \$1,000,000 in attorneys' fees  
18 defending the HOA Action.

19 7. On October 7, 2011, Judge Patrick T. Madden issued a Tentative Decision in the  
20 HOA Action. The court found that the Assignment Fee was a "transfer fee" as defined under  
21 Cal. Civ. Code § 1098 and therefore subject to the notice requirements of Cal. Civ. Code §  
22 1098.5. Because SCFC did not record written notice of the Assignment Fee before December  
23 31, 2008, Judge Madden held the Assignment Fee was "not collectable commencing January 1,  
24 2009 and thereafter."

25 8. On November 14, 2011, Judge Madden entered a Statement of Decision adopting  
26 its Tentative Decision issued on October 7, 2011 as his final ruling for Phases I and II of the  
27 HOA Action. Because there were issues remaining to be resolved in Phase IV of the HOA  
28 Action, Judge Madden did not enter judgment for the HOA at that time.

9. On October 24, 2012, Debtor filed a voluntary petition for chapter 11 relief.

10. On November 9, 2012, this Court entered an order granting the HOA relief from the automatic stay to prosecute the HOA Action to final judgment pursuant to the terms a stipulation between Debtor, SCFC, and the HOA.

11. On November 13, 2012, SCFC and Debtor (who is now a non-party) filed the complaint that initiated this adversary proceeding, alleging that Rhoades committed legal malpractice by not advising SCFC to record a Notice of the Assignment Fee prior to December 31, 2008 deadline.

12. On July 23, 2013, Judge Madden entered final judgment in the HOA Action in favor of the HOA and against SCFC and Debtor.

## Conclusions of Law

1. SCFC’s complaint for legal malpractice is time-barred. Claims for legal malpractice must be filed within one year from when the former client discovers the acts constituting the alleged malpractice, or four years from the date of the wrongful act or omission, whichever occurs first. Cal. Code Civ. Proc. § 340.6(a). The limitations period may be tolled until the former plaintiff suffers an “actual injury,” Cal. Code Civ. Proc. § 340.6(a)(1), or while the attorney continues to represent the former client regarding the specific subject matter in which the alleged wrongful act or omission occurred, Cal. Code Civ. Proc. § 340.6(a)(2).

2. Here, Rhoades' alleged wrongful act was his failure to record, or to advise SCFC to record, a Notice of the Assignment Fee prior to a statutory deadline of December 31, 2008. SCFC first became aware of the alleged malpractice claim when the HOA Litigation was commenced on March 23, 2009. If the limitations period were not tolled, the limitations period would have ended on March 23, 2010.

3. The limitations period was tolled until SCFC suffered an “actual injury” from Rhoades’ alleged malpractice. Under California Code of Civil Procedure § 340.6(a)(1) , an “actual injury” includes any legally cognizable damage necessary to assert the cause of action.

1 Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison, 18 Cal.4th 739, 752 (1998).  
2 Attorney's fees paid to a second attorney to remedy or reduce the consequences of the first  
3 attorney's negligence may be recoverable as damages, and thus trigger the commencement of the  
4 statute of limitation. See e.g., Budd v. Nixen, 6 Cal.3d 195, 202 (1971); Sirott v. Latts, 6  
5 Cal.App.4th 923, 928 (1992); Bennett v. McCall, 19 Cal.App.4th 122, 128 (1993); Kovacevich  
6 v. MicKinney & Wainwright, 16 Cal.App.4th 337, 344 (1993); Croucier v. Chavos, 207  
7 Cal.App.4th 1138, 1150 (2012). Furthermore, "[t]here is no requirement that an adjudication or  
8 settlement must first confirm a causal nexus between the attorney's error and the asserted injury.  
9 The determination of actual injury requires only a factual analysis of the claimed error and its  
10 consequences. The inquiry necessarily is more qualitative than quantitative because the fact of  
11 damage, rather than the amount, is the critical factor." Jordache, 18 Cal.4th at 752.

12 4. Here, SCFC had incurred over \$1,000,000 in attorneys' fees defending the HOA  
13 Action by October 1, 2011. These attorneys' fees constitute an "actual injury" for purposes of  
14 Cal. Code Civ. Proc. § 340.6(a)(1). Resolution of the HOA Action, whether by adjudication or  
15 settlement, was not required for SCFC's attorneys' fees to constitute an "actual injury."  
16 Jordache, 18 Cal.4th at 752. Therefore, pursuant to subsection (a)(1), the statute of limitations  
17 was tolled until October 2011 and expired in October 2012.

18 5. Section 340.6(a)(2) did not toll the limitations period beyond October 2011  
19 because Rhoades' representation of SCFC ended on July 31, 2010. Thus, the termination of  
20 Rhoades' representation would only have tolled the statute of limitations until July 31, 2011.

21 6. SCFC's complaint is untimely because it was filed on November 13, 2012, after  
22 the limitations period expired October 1, 2012. Pursuant to California Code of Civil Procedure §  
23 340.6, SCFC's complaint against Rhoades is time-barred and Rhoades is entitled to judgment as  
24 a matter of law.

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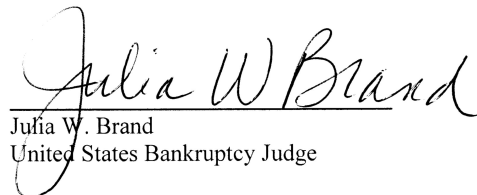
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1           7.       Having found that SCFC's complaint is time-barred by the statute of limitations,  
2 the Court does not make any findings or conclusions as to whether SCFC is also barred from  
3 prosecuting this action because it was required to litigate the legal malpractice claim as a  
4 compulsory cross-complaint in prior litigation between the parties regarding Rhoades' legal fees.

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25       Date: May 7, 2014

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27                               Julia W. Brand  
28                               United States Bankruptcy Judge